IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5253 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BIPINCHANDRA R DESAI

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 5253 of 2001

MR VYAPAK N DESAI for Petitioner No. 1

MR JS YADAV for Respondent No. 1

MR. H.C. PATEL, AGP, for Respondent No. 2

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 09/08/2001

ORAL JUDGEMENT

Bipinchandra R. Desai-petitioner has filed this

petition challenging the decision of respondent No. 1, namely, Union of India denying the Swantrata Sainik Samman Pension Scheme, 1980, to the petitioner by its order dated 29.6.2000.

2. The facts giving rise to this petition are as under:-

2.1 The petitioner made an application to respondent Nos. 1 and 2 on 18.3.1986 for the purpose of grant of pension under Swatantrata Sainik Sanman Pension Scheme (hereinafter referred to `SSS Pension Scheme').

2.2 It has been mentioned by the petitioner that he came to know about the scheme on 31.10.1996 that All India Freedom Fighter Successor's Organisation issued a circular (copy of the circular has been annexed with the petition) conveying that in view of the judgement of the Hon'ble Supreme Court in the case of freedom fighters that the freedom fighters who were sentenced to imprisonment for six months or more but underwent imprisonment for less than six months and were not released as a result of tendering apology but released as a result of general amnesty by the Government are entitled to pension under S.S. S. Pension Scheme on the fulfilment of terms and conditions as mentioned therein.

2.3 In view of the aforesaid circumstances the petitioner filed fresh application on 31.3.1999 to respondent No. 1 for grant of pension under S.S.S. Pension Scheme along with all necessary documents required for fulfilling necessary terms and conditions therein.

2.4 It has been contended in the petition that respondent No. 1 addressed a communication dated 9.12.1999 to the petitioner by which respondent No. 1 rejected the application of the petitioner without considering the relevant documents attached therein.

2.5 It has been contended by the petitioner that Union respondent No. 1 has again addressed a letter dated 29.6.2000 to the petitioner stating that the case of the petitioner has already been rejected vide letters dated 28.10.1999 and 9.12.1999 and it has also been stated that fresh representation of the petitioner has been considered and as he has failed to submit any fresh official document in support of his claim, it is not possible for the Ministry to reopen his case. The said communication has been annexed at page 75 of the petition. Thereafter, from 10.2.2000 to 26.2.2000 the

petitioner addressed several letters to respondent Nos. 1 and 2 clarifying the position and requesting respondent No. 1 to reconsider his application on the basis of the documents attached thereto. Respondent No. 1 did not reply to any of the letters and also did not reconsider its decision in this behalf.

2.6 Being aggrieved and dissatisfied with the aforesaid action of the respondents, the petitioner has filed the present petition before this court. When the matter was placed for hearing on 13.7.2001, this court passed the following orders:

> "In view of the judgement of the Hon'ble Supreme Court in the case reported in AIR 1993 SC 2127 which has been referred on page 22 and in view of the fact that a letter dated 9th December, 1999, In view of the same, I issue Rule returnable on 2nd August, 2001."

2.7 It has been contended by the petitioner that the petitioner has already annexed the certificate from freedom fighters who had a proven jail suffering of one year as well as affidavit of co-prisoner and also certificate from sitting M.P. / M.L.A. specifying the jail period. He submitted that therefore the finding of the authority is clearly illegal and without any basis.

2.8 Learned counsel for the petitioner submitted that he has already submitted the certificate issued by the Superintendent, Sub Jail, Navsari dated 10.2.1986 where the petitioner served the period of sentence, specifying the period of admission and release as 20.11.1942 and 20.3.1943. As the relevant record from the jail authority is not available, the petitioner submitted the certificate from the Superintendent. He submitted that respondent No. 2 has considered all the documents produced by the petitioner and addressed letters dated 30.7.1999 and 25.8.1999 to respondent No. 1 whereby recommending the case of the petitioner and requested respondent No. 1 to take appropriate decision on the application of the petitioner. The petitioner has also produced 3 co-prisoners' certificates of which one co-prisoner is Ex-Member of Parliament duly certifying the jail sentence suffered by the petitioner. The said certificates are annexed with the petition.

2.9 Thereafter, the matter was placed for hearing before me. The learned counsel for the petitioner has relied on the judgement of the Hon'ble Supreme Court in the case of MUKUND LAL BHANDARI AND OTHERS VS. UNION OF

INDIA AND OTHERS reported in AIR 1993 SC 2127, where the Division Bench of the Hon'ble Supreme Court in para 4 has observed as under:

"As regards the sufficiency of the proof, the Scheme itself mentions the documents which are required to be produced before the Government. It is not possible for this Court to scrutinize the documents which according to the petitioners, they had produced in support of their claim and pronounce upon their genuineness. It is the function of the Government to do so. We would, therefore, direct accordingly.

As regards the contention that the petitioners had filed their applications after the date prescribed in that behalf, we are afraid that the Government stand is not justifiable. It is common knowledge that those who participated in the freedom struggle either at the national level or in the erstwhile Nizam State, are scattered all over the country and most of them may even be inhabiting the remotest parts of the rural areas. What is more, almost all of them must have now grown pretty old, if they are alive. Where the freedom fighters are not alive and their widows and the unmarried daughters have to prefer claims, the position may still be worse with regard to their knowledge of the prescribed date. What is more, if the Scheme has been introduced with the genuine desire to assist and honour those who had given the best part of their life for the country, it ill-behoves the Government to raise pleas of limitation against such claims. In fact, the Government, if it is possible for them to do so, should find out the freedom fighters or their dependents and approach them with the pension instead of requiring them to make applications for the same. That would be the true spirit of working out such Schemes. The Scheme has rightly been renamed in 1985 as the Swatantra Sainik Samman Pension Scheme to accord with its object. We, therefore, cannot countenance the plea of the Government that the claimants would only be entitled to the benefit of the Scheme if they made applications before a particular date notwithstanding that in fact they had suffered the imprisonment and made the sacrifices and were thus otherwise qualified to receive the benefit. We are, therefore, of the view that whatever the date on which the

claimants make the applications, the benefit should be made available to them. The date prescribed in any past or future notice inviting the claims, should be regarded more as a matter of administrative convenience than as a rigid time limit."

2.10 The learned counsel for the petitioner has relied on the judgement of this court in the case of PURSHOTTAM @ FAKIRBHAI BHIKHABHAI PATEL VS. UNDER SECRETARY decided by this court (Coram: K.M. Mehta, J) on 30.7.2001 in which at para 6.3 the court has observed as under:-

"In my view, the person like petitioner, who is the senior citizen, who has sacrificed his life regarding freedom struggle, ought to have been respected with dignity and honour. The Officers of the Union of India must show high regard in this behalf. In fact, the legislature has also enacted very noble scheme with very good objective to see that senior citizens persons like this Swatantra Sainik are rewarded to some extent. I have referred to the judgements of the Hon'ble Supreme Court in the Narayanan's case (AIR 1990 SC 746), Surja and other's case ((1991) 4 SCC 366) and Mukund Lal Bhandari's case (AIR 1993 SC 2127) and also the judgement of this court in the case of Ambalal Ratnabhai (1995(1) GLR 289) and also judgements of Bombay High Court and Madras High Court in this behalf. In view of all these catena of decisions, the legal position is well settled. All these judgements have held that the scheme has been formulated with a view to acknowledge the services rendered to the country by patriotic citizens during the freedom movement and who had suffered at the hands of British Rulers in one way or the other and to compensate them in some measure for their sacrifices for the sake of the country. In my view this scheme is in nature of beneficial provisions and the provisions of the said scheme should be construed liberally. Unfortunately, the officers particularly Union of India's Officers are construing the said scheme very narrow and very pedantic manner. They must realise and understand the noble objectives of the said scheme has been introduced with noble objective and the object of the scheme has to be fulfilled. Unfortunately by their action, the whole noble objectives of the scheme has been frustrated because of their narrow meaning."

3. The learned Standing Counsel for the respondent has tried to support the action of the respondent denying pension under S.S.S. Pension Scheme to the petitioner.

3.A In my view, therefore, the petitioner has fulfilled all the necessary required conditions specified hereinabove for obtaining pension under S.S.S. Pension Scheme and the same is intimated to respondent No. 1 time and again through several letters. In spite of said facts, respondent No. 1 rejected the application of the petitioner for grant of the pension under S.S.S. Pension Scheme. In my view the petitioner has produced a certificate issued by the Superintendent, Sub Jail, Navsari dated 10.2.1986 where the petitioner served the period of sentence, specifying the period of admission and release as 20.11.1942 and 20.3.1943 respectively without any indication that the petitioner tendered any apology. The petitioner has also submitted a letter issued by Superintendent, Sub Jail, Navsari, dated 14.9.2000 categorically stating that the relevant register necessary to know how the petitioner has been released from jail is not available. Therefore, the petitioner has submitted the certificate from the Superintendent. In my view the petitioner has produced three co-prisoners' certificates, of which one co-prisoner is an Ex-Member of Parliament duly certifying the jail sentence suffered by the petitioner. The Officers of the Union of India must be satisfied with the said certificates and ought not to have raised technical contention. In my view the respondent officers must understand that the petitioner herein has sacrificed his life for the freedom struggle and the legislature has, as a token to sacrifice of the life which is irreparable, desired to give certain benefits to those people who sacrificed their life. The executive for some technical reason try to defeat the object of the scheme introduced by the legislature in this behalf.

3.B In my view the petitioner has clarified the sufferings. Respondent No. 1 has without considering the facts and the evidence produced by the petitioner has rejected the application of the petitioner. In my view the petitioner has filed all the documentary evidences in support of the submission.

3.C In my view the decision to reject the application of the petitioner and not to grant pension under S.S.S. Pension Scheme is totally against the object of the Scheme. In my view the decision of respondent No. 1 to

reject the application of the petitioner is wholly arbitrary. In my view the officer ought to have seen that the petitioner made application right from March, 1986 and thereafter again made application in October, 1996 and March 1999 in this behalf. The respondent authority has rejected the earlier application dated 22.9.1999 and further rejected the representation dated 29.6.2001 and therefore the petitioner was constrained to file this petition before this court. It may be noted that the Hon'ble Supreme Court as well as this court has delivered several judgements in this behalf but the authority has taken a rigid stand.

4. In view of the above judgements, the reasoning given by the authority is not well founded and therefore I quash and set aside the communication dated 9.12.1999 and 29.6.2000 by which the respondents have rejected the application of the petitioner. The petition is therefore allowed. I, therefore issue writ of mandamus directing the Union of India to pay pension to the petitioner from the date of his application, namely, 18.3.1996. If the amount is paid by the Union within two months from the date of receipt of the writ of this court, the same will carry interest at the rate of 10%. However, if the amount is paid after two months from the date of receipt of writ, then the respondents are directed to pay interest at the rate of 12% on the amount due to the petitioner.

5. With the above observations, the petition is allowed with no order as to costs.

(K.M. MEHTA, J)

(pkn)